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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1947.

MERCANTILE-COMMERCE BANK AND TRUST CO. and JOHN EDWIN GEORGE, Executors of the Estate of P. D. George, Deceased,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

No. 637

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals
for the Eighth Circuit

and

BRIEF IN SUPPORT.

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INDEX.

Cases Cited.

Textbooks Cited.

Statutes Cited.

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PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit.

To the Honorable Supreme Court of the United States:

The petitioners, Mercantile-Commerce Bank and Trust Company and John Edwin George, executors of the estate of P. D. George, deceased, respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Eighth Circuit in cause styled: "Mercantile-Commerce Bank and Trust Co. and John Edwin George, executors of the estate of P. D. George, deceased, Petitioners, v. Commissioner of Internal Revenue, Respondent," affirming the decision of the Tax Court of the United States.

JUDGMENT AND APPLICATION FOR CERTIORARI.

The judgment of the United States Circuit Court of Appeals was entered on January 15, 1948 (R. 53), and this petition is filed within three months thereafter.

STATEMENT OF CASE.

This case involves taxation of income for the years 1942 and 1943.

In 1939 P. D. George, petitioners' decedent, transferred certain stock in the P. D. George Co., a corporation, to himself and others as trustees in trust for his seven sons. Under the provisions of the trust instrument, P. D. George retained the right and power to change the beneficiaries of the income to be received more than thirty days after the change and corpus of the trust, and also the right to accelerate the distribution of the property in trust to the beneficiary thereof. The Commissioner of Internal Revenue, respondent, determined that the trust income for 1939 was taxable to P. D. George because of the powers retained by him. The Tax Court approved the determination of the Commissioner and the Circuit Court of Appeals, Eighth Circuit, affirmed (R. 47).

Prior to 1942 P. D. George caused all the stock held by the trustees for six of his seven sons to be distributed to them discharged from the trust so that the only property remaining in trust during 1942 and 1943 was one hundred shares of the stock held by the trustees for the seventh son, Pericles Francis George. The income from these one hundred shares of stock for the years 1942 and 1943 was distributed to Pericles Francis George who reported it as a part of his income (R. 47-48).

On February 10, 1945, respondent asserted gift tax deficiencies against P. D. George for 1942 and 1943 in the re-

spective amounts of $210.00 and $567.00 on the basis that he made gifts to his said son of the trust income for 1942 and 1943, the same income upon which the deficiencies in income tax in contest in this proceeding are asserted. The gift tax deficiency notice stated: "It has been determined that donor made a gift * * * to Pericles Francis George by releasing income from a revocable trust created by donor December 23, 1939" (R. 30-31). The Commissioner's determination of the gift tax was approved by the United States Tax Court (R. 31).

On October 21, 1942, the President signed the Revenue Act of 1942, which contained Section 111, amending Section 22 (b) (3) of the Internal Revenue Code (concerning Income Tax), and was effective from and after January 1, 1942 (56 Stat. 808).

Notwithstanding said amendment, respondent included in the income of P. D. George the trust income for 1942 and 1943 (the income from the stock held in trust as aforesaid), being the same income which respondent determined P. D. George had given to his son. Petitioners duly petitioned the Tax Court of the United States for review and said court sustained the Commissioner's determination. Upon appeal the Circuit Court of Appeals, Eighth Circuit, affirmed the decision of the Tax Court by opinion entered January 15, 1948.

JURISDICTION.

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, Chapter 229, sec. 1, 43 Stat. 938, 28 U. S. C. A., § 347.

STATUTE INVOLVED.

The Federal statute involved is Section 22 of the Internal Revenue Code, as amended by section 111 of the Revenue Act of 1942, which, after defining gross income, provides:

> "(b) **Exclusions From Gross Income.** The following items shall not be included in gross income and shall be exempt from taxation under this chapter:
>
> * * * * * * *
>
> "(3) **Gifts, Bequests, Devises, and Inheritances.** The value of property acquired by gift, bequest, devise or inheritance. There shall not be excluded from gross income under this paragraph the income from such property, *or, in case the gift, bequest, devise or inheritance is of income from property, the amount of such income. For the purposes of this paragraph if, under the terms of the gift, bequest, devise or inheritance, payment, crediting or distribution thereof is to be made at intervals, to the extent that it is paid or credited or to be distributed out of income from property, it shall be considered a gift, bequest, devise or inheritance of income from property.*" (Emphasis supplied.)

The part of the statute italicized above was added by the Revenue Act of 1942, Section 111 (a), and is effective only for years beginning after December 31, 1941.

DECISION OF LOWER COURT.

The Circuit Court of Appeals decided that petitioners' decedent, P. D. George, was taxable on the income of the trust for the years 1942 and 1943; that, notwithstanding that during such years he made a gift of such income

which was from property, it was to be included in his gross income, under Section 22 (a) of the Internal Revenue Code.

QUESTION PRESENTED.

The question presented is the application to this case of Section 22 (b) (3) of the Internal Revenue Code as amended by the Revenue Act of 1942, quoted above; specifically, whether or not in case of a gift of income from property, the amount of such income should be included in the income of the donor and excluded from the income of the donee.

This question depends solely upon the question whether or not a duly enacted statute may by reference to statutory history or otherwise be determined by a court to have a meaning which cannot be found in its words or context.

REASONS FOR ALLOWANCE OF THE WRIT.

(A) The Circuit Court of Appeals has decided an important question of Federal law which has not been but should be settled by this Court, to-wit:

Should income from property, which income is the subject of a gift, be excluded from the income of the donee, and included in the income of the donor under the provisions of Section 22 (b) (3) of the Internal Revenue Code as amended by the Revenue Act of 1942?

(B) The Circuit Court of Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court. The question is whether or not a Federal statute, Section 22 (b) (3) of the Internal Revenue Code, may be "construed," although there is no ambiguity in it; and whether or not a meaning may be ascribed to a statute contrary to its words. The Court below has so construed the statute and ascribed such meaning to it.

(C) The Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision, in this, to-wit: It has made its decision arbitrarily, and without regard to reason or to the law or the facts, contradicting itself in reasoning that Section 22 of the Internal Revenue Code is both applicable and inapplicable, and that Supplement E of the Internal Revenue Code is both inapplicable and applicable. Further, it has imposed a penalty when none is authorized by law or statute, sustaining a tax because a taxpayer created a trust, upon the assertion, not supported in the record and not true in fact, that the purpose of the trust, the existence of which was to be ignored, was to avoid tax. The tax is not in any way related to the trust or any trust income, for there was no "trust" income.

SPECIFICATION OF ERRORS.

The Court below erred:

1. In attempting to construe Section 22 (b) (3) of the Internal Revenue Code, which has no ambiguity in its application to this case.

2. In holding that in the case of gift of income from shares of stock, such income should be excluded from the taxable gross income of the donee and included in that of the donor.

3. In refusing to apply the plain words of Section 22 of the Internal Revenue Code.

Wherefore, your petitioners respectfully pray that a Writ of Certiorari be issued ou[illegible]d under the seal of this Honorable Court, directed to [illegible]ted States Circuit Court of Appeals, Eighth Circuit, [illegible] directing that the certified transcript of the record, filed with this Petition,

in the case numbered and entitled on the docket of said Circuit Court of Appeals No. 13,587, Tax Review, Mercantile-Commerce Bank & Trust Co. and John Edwin George, Executors of the Estate of P. D. George, Deceased, Petitioners, v. Commissioner of Internal Revenue, Respondent, be treated as though sent up in response to such writ, and that the said judgment of the United States Circuit Court of Appeals in said case may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

MERCANTILE-COMMERCE BANK & TRUST CO. and JOHN EDWIN GEORGE, Executors of the Estate of P. D. George, Deceased,

By ABRAHAM LOWENHAUPT,
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BRIEF

In Support of Petition for Writ of Certiorari.

OPINION BELOW.

The opinion of the United States Circuit Court of Appeals, Eighth Circuit, is reported under the title "Mercantile-Commerce Bank and Trust Co. and John Edwin George, Executors of the Estate of P. D. George, Deceased, v. Commissioner of Internal Revenue," in 164 F. (2d) ...., and is printed on pages 47 to 52 of the Record. It was rendered on January 15, 1948.

JURISDICTION.

The Petition is filed for review of the judgment of the Court of Appeals entered January 15, 1948 (R. 53).

This is a civil suit originated by petition to The Tax Court of the United States to review a deficiency in income taxes determined by the respondent and upon petition by the taxpayer from an adverse judgment of The Tax Court reviewed by the United States Circuit Court of Appeals for the Eighth Circuit. The Writ of Certiorari is sought, directed to the United States Circuit Court of Appeals for the Eighth Circuit. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (Title 28 U. S. C. A., § 347).

STATEMENT OF FACTS.

A full statement of the facts is given in the Petition for Writ of Certiorari under heading "Statement of the Case." For the sake of brevity it is not repeated here.

SPECIFICATION OF ERRORS.

The decision of the Court of Appeals is erroneous in the following respect:

In that it holds that, as to years controlled by the Revenue Act of 1942, income derived from property in such years and given away is excluded from gross income of the donee and is included in gross income of the donor.

QUESTION PRESENTED.

The precise question presented in this case is whether or not under the Revenue Act of 1942 in the case of a gift of income from property such income is included in the taxable income of the donor. The question arises under Section 22 (b) of the Internal Revenue Code as amended by Section 111 of the Revenue Act of 1942. The section provides:

> "The following items shall not be included in gross income and shall be exempt from taxation under this chapter: * * * (3) The value of property acquired by gift, bequest, devise, or inheritance. *There shall not be excluded* from gross income under this paragraph the income from such property, or *in case the gift, bequest, devise or inheritance is of income from property, the amount of such income.*" (Italicized portion added by Revenue Act of 1942.)

The sole question presented is whether or not this section of the statute means what it says.

ARGUMENT.

I.

Explanation of the Statute.

A. Its meaning.

It appears from Section 22 (b) (3) of the Internal Revenue Code, as amended, that in case of a gift of income from property the amount of such income is not excluded from gross income. It is not excluded from (i. e., is included in) the income of the *recipient*.

The first sentence of the quoted statute excludes from income of the donee the value of property *acquired* by gift. It is the recipient who *acquires* property, not the donor. The next part of the statute provides that the income from such property is not to be excluded. This is a provision for inclusion of that income in the taxable income of the recipient, because he is the one who *acquires* the property. So, also, the material phrase, the emphasized portion of the statute quoted above, is addressed to the income of the recipient. This also is apparent because the statute says so, being addressed to the acquisition of income by gift. The act of giving property, whether income or principal, cannot give rise to income in the giver. Income is received, as provided in paragraph 22 (a), by the receipt of dividends, interest or other income. Section 22 (a) provides for the inclusion of income, Section 22 (b) for its exclusion.

Section 22 (b) (3) in terms deals only with the income of a donee of property or income. By its reflex it exempts the donor. Admittedly income is taxed only once, because after it comes in to one recipient it cannot come in again and be income to another. A provision that in case of a

gift of income, the amount of such income is deemed to come in to the donee (not excluded from the income of the recipient), is a provision that it does not come in to the donor. Admittedly income arising after property has been acquired by gift is income of the donee and not of the donor of the property. The phrase in Section 22 (b) (3) directing that such income shall not be excluded from the income of the donee is joined by the correlative conjunction "or" with the phrase providing to whom income acquired by gift (if the income arose from property) shall be attributed. Both (1) income from property after the property is acquired by gift and (2) income acquired by gift (if the income arose from property) are declared income of the donee, and therefore not of the donor.

The questions, therefore, in the case of a gift of income from property, whether the amount of such income is included in the income of the donee, and whether the amount of such income is excluded from the income of the donor, are in reality but one question.

B. **The amendment was made to remedy an evil pointed out by this Court.**

In 1941, a year prior to the enactment of the Revenue Act of 1942, this Court had before it the question whether the assignment of a beneficiary's interest in a trust for one year was a gift of income-producing property or a gift of income from property. It held it was a gift of income only, and therefore taxable to the donor, not the donee. *Harrison v. Schaffner,* 312 U. S. 579. It left undefined the exact demarcation between gift of income and gift of property, saying (l. c. 583-4):

> "*Unless in the meantime the difficulty be resolved by statute or treasury regulation,* we leave it to future judicial decisions to determine precisely where the line

shall be drawn *between gifts of income-producing property and gifts of income from property* of which the donor remains the owner, for all substantial and practical purposes." (Emphasis supplied.)

Then Section 111 (a) of the Revenue Act of 1942 [amending Section 22 (b) (3) of the Internal Revenue Code] provided for the inclusion in the income of the donee (correlatively exclusion from the income of the donor) of the "income from such [donated] property, or in case the gift is of *income from property,* the amount of such income," under the heading, **"Gift of Income From Property Not Excluded From Gross Income."**

Thus Congress forthwith, in the very language of this Court, resolved the difficulty envisioned by this Court, and provided that there should be no line between a gift of income-producing property and a gift of income from property. It thus enacted the rule of *Irwin v. Gavit,* 268 U. S. 161, and abolished the distinction not expressed in *Irwin v. Gavit,* upon which this Court called for clarification in *Harrison v. Schaffner, supra,* between the gift of income-producing property and the gift of income from property. The income in both cases is taxed to the donee. The identity of language of the question by this Court, just quoted, and the statute, both speaking of a "gift of income from property" can hardly be merely coincidental. But the court below has refused notice of the statute resolving the very question posed.

II.

Reasons for Granting the Writ.

Under the rules of this Court there are three reasons why the Writ of Certiorari for which Petitioners pray should issue:

A. The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, and eventually must be, settled by this court;

B. The Circuit Court of Appeals has decided a federal question probably in conflict with applicable decisions of this Court; and

C. The Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings in refusing to apply the laws duly enacted to the facts before it as to call for the exercise of this Court's power of supervision.

A. **The question of Federal law is important. Congress has given it repeated notice.**

The substantial question presented involves the income of all trusts where the trust income is distributed pursuant to the trust to named beneficiaries, but the grantor by reason of retained powers is ruled to be the substantial owner of the trust corpus. This includes, if not all, at least a very substantial number of the trusts to which the decisions of this court in *Helvering v. Clifford,* 309 U. S. 331, and *Harrison v. Schaffner,* 312 U. S. 579, are applicable. The reported litigated cases in which those decisions have been applied are legion, and it is fair to assume that the unreported cases in which taxpayers, because of those decisions, have paid tax or deficiency and in which reductions in tax liability and refunds have been enjoyed are even more numerous.

In those cases the result, if the doctrine is retained, is that some taxpayers pay income tax calculated on income which they have not received and cannot receive, and others receive gifts of income exempt from tax. The income tax in such cases is not based upon ability to pay;

rather, the liability is based upon a tantalizing, fruitless ownership. Taxpayer is told that because he controls the corpus he therefore owes tax upon (enjoys?) the income; this is based upon a legal fiction. The equitable doctrine that the beneficiary of income has a substantial ownership of the corpus from which it arises tends to support the generalized observation that the substantial owner of the corpus is the beneficiary of the income. But that observation conflicts with reality in particular cases not envisioned in the hornbook law of trusts: the owner of a productive field, if he lacks the right to use the produce, like those who "have meat they cannot eat," may still starve.

The hardship of this tax theory, which is being applied by respondent and by the court below, increases as the rates of tax increase, and in 1942, under the tax rates then imposed, it became apparent (and it is now apparent) that taxpayers who must include in income substantial amounts which they never could receive will be unable out of income to pay tax. Unless this Court rules that the amendments of 1942 are effective according to their terms, taxpayers will be compelled, under the rates of tax which became effective in 1942 and under the rates prevailing ever since, to invade capital, in some cases without anything remaining for their personal living expenses. The rates under the 1942 Act reached 88%, so that if a taxpayer in this bracket was not entitled to receive 50% of the income taxed to him under this tragic fiction, his tax would be 176% of his available income. The greater the income the graver the hardship and the less his ability to pay.

The old generalized doctrine, frequently expressed, that income is to be taxed to the owner of the property from which it arises sometimes becomes flagrantly inconsistent with the justification for graduated taxation of incomes,

that taxes should be assessed in proportion to ability to pay.

Congress, therefore, in numerous particular instances limited the application of the doctrine that income is taxable to him who controls its source. Petitioners assert that Congress expressly limited its application in the case of a gift of income from property, including the case of a trust where the income accrues to another than the "substantial owner" of the corpus. The unjust burden upon taxpayers in this situation was more flagrant than that upon taxpayers in somewhat similar situations, which were unquestionably alleviated by Congress. It is unreasonable to believe that Congress would address itself specifically to rare and small instances of injustice and omit the frequent and large.

Numerous applications by this Court of the doctrine that income is taxable to the owner of its source rather than on a basis of ability to pay were unquestionably superseded by legislation. For instances:

In *Douglas v. Willcuts,* 296 U. S. 1, the doctrine was applied to a trust to pay alimony to a taxpayer's divorced wife. The application was reversed by Section 22 (k) of the Internal Revenue Code enacted in 1942. [Regulations 111, Sec. 29.22 (k)-1.]

In *Helvering v. Enright Estate,* 312 U. S. 636, the doctrine was applied to require taxation of income to a decedent who owned the source when the income accrued. The executors acquired the income by bequest. This application, too, was reversed by Section 126 of the Internal Revenue Code enacted in 1942.

In *Helvering v. Pardee,* 290 U. S. 365, and *Burnet v. Whitehouse,* 283 U. S. 148, the doctrine was applied to require taxation of income to the substantial owner of

property notwithstanding that he was under obligation to pay the equivalent of the income to an annuitant. The one taxpayer received gifts of income free of tax, and the other paid tax on income he could not retain. This application, too, was reversed by Section 22 (b) (3), or in the case of a trust by Section 162 of the Internal Revenue Code as amended by the Revenue Act of 1942.

Again, prior to 1942, a landlord derived income, but no money with which alone he could pay taxes, if a lease upon which improvements had been made was terminated. *Helvering v. Bruun,* 309 U. S. 461. Congress postponed the payment of tax until the taxpayer was enabled by receipts upon disposition of the improvements to pay it. (Revenue Act of 1942, Sec. 115 [a], I. R. C., Sec. 22 [b] [11].)

The rule of *Helvering v. Stuart,* 317 U. S. 154, was rescinded retroactively by Sec. 134 of the Revenue Act of 1943 (I. R. C., Sec. 167 [c]).

The rule of *Deputy v. DuPont,* 308 U. S. 488, was rescinded by Section 121 of the Revenue Act of 1942 (I. R. C., Sec. 23 [a] [2]).

The rule of *Harrison v. Schaffner,* 312 U. S. 579, as pointed out above, is rescinded.

Congress reversing prior decisions ruled this case: Property is owned by A (as beneficiary of a trust or otherwise) subject to an annuity in favor of B. The income is taxable to B as donee of the income to the extent of the annuity although A unquestionably owns the corpus of the property as truly as he would own it if there were no annuity or if it were subject only to a mortgage. *(Helvering v. Pardee, supra.)* This conclusion must be accepted under the Internal Revenue Code as amended in 1942 (I. R. C., Sec. 162, if there is a trust, 22 [b] [3] if there is not.) The camel has already been swallowed. To object to the

taxation of income to the recipient thereof merely because another has substantial powers over the property from which the income arises is to strain at a gnat.

The same policy prevailed with reference to estate tax, which also derives an economic justification from the fact that the excisable event gives rise to ability to pay. Under the rule of *Estate of Sanford v. Commissioner*, 308 U. S. 39, the corpus of trusts, the income of which was taxable to the substantial owner, is includible in the gross estate; and the surrender of the substantial ownership gives rise to gift tax liability; but there is no property rendered available by the "gift" or "inheritance" to pay the tax. The taxpayers were trapped. Congress sprung the trap, deliberately and carefully, by excluding the surrender, before July 1, 1948, of the substantial ownership in such cases from taxable gifts. Revenue Act of **1942**, Section 452 (c), as amended by Acts, Dec. 17, **1942**, c. 740, 56 Stat. 1054; June 9, **1943**, c. 120, § 10, 57 Stat. 150; Feb. 25, **1944**, c. 63, Title V, § 505, 58 Stat. 72; Dec. 20, **1944**, c. 616, § 1, 58 Stat. 830; June 29, **1945**, c. 200, § 1, 59 Stat. 264; May 29, **1946**, c. 278, 60 Stat. 229; June 25, **1947**, c. 143, § 1, 61 Stat. 178.

In the enumerated cases, Congress in the 1942 Act has removed the application of the old principle that the income from property is to be attributed and taxed to the owner. The amendment to Section 22 (b) (3) was essential to harmonize the changed principle with the general application of the statute. The decision of the court below destroys the harmonization.

One by one, Congress has rescinded rules which impair the justification of taxation of incomes—ability to pay—and are based on a conflicting, technical doctrine. Each such rule has received the particular notice of Congress, but the Court below has denied that notice of the rule of *Helvering v. Clifford, supra.* The repeated congressional

notice in the statutes, showing that the hardship caused by departures from the principle that income tax is based on ability to pay is of grave concern to Congress, demonstrates not only the error of the court below, but also the importance of the question presented in this case.

The question has the same importance as that presented and decided in *Helvering v. Clifford, supra,* since the application of the rule of that case is involved. It has the importance of *Harrison v. Schaffner, supra,* since it involves the question whether or not the express enactment that the rule of that case is abolished is to be regarded or ignored. It has the importance of the statute itself, since the question is whether the statute has any application at all. We think it may be said with assurance that a question of such gravity that it has been considered by Congress in 1942 and every subsequent year calls for the attention of this Court.

The rule of *Helvering v. Clifford, supra,* is that income from property is taxable to the substantial owner of that property, even if the income is given away. The rule of *Helvering v. Butterworth,* 290 U. S. 365, *Helvering v. Pardee,* and *Burnet v. Whitehouse, supra,* is the same. Income, in those cases, was taxable to the owners of the property. In the annuity cases, the substantial owner was the trustee (that is, in economic effect, the remainderman) who paid the tax on the income notwithstanding that it was used to discharge an obligation of the property—the annuity. Congress has now enacted in express terms that income from property, in case such income is given away, is not taxable to the owner of the property. The rule of the annuity cases is admittedly revoked. The rule of *Helvering v. Clifford,* in a case where the income is given away, is the same. It cannot stand, isolated and alone, when its whole basis is destroyed and its application expressly denied by statute.

B. **The decision below conflicts with applicable decisions of this Court.**

The applicable statute provides:

> "There shall *not* be excluded from gross income under this paragraph, the income from such [donated] property, or, in case the gift, bequest, devise or inheritance is of income from property, the amount of such income." (Emphasis supplied.)

The Court below has held that there shall be excluded (neglecting the "not") from gross income under that paragraph in case the gift is of income from property, the amount of such income. It has arrived at this conclusion by a "construction" of the statute and has held that resort may be had to legislative history to establish a meaning of the statute which cannot be found in its words. It holds that an uncertainty in the use of language, by which we can understand only an uncertainty of the Court whether or not Congressmen in their secret minds intended to include the words of the statute in their enactment, justifies a resort to legislative history to determine whether or not to follow the statute.

We pass over at this time the question whether the legislative history indicates an intention contrary to the words of the statute, for this question is irrelevant to the determination of the petition for Certiorari, and more especially to the determination of whether or not there is an ambiguity in the statute.

Whatever may have been the intention of the legislators, the decisions of this court establish that the meaning of a statute must be found in its words, and unless there is an ambiguity—that is a choice between two or more meanings of the words—there is no room for construction.

Mr. Justice Frankfurter, writing in the *Columbia Law Review* of May, 1947, on the Reading of Statutes, states:

> "When we talk of statutory construction we have in mind cases in which there is a fair contest between two readings, neither of which comes without respectable title deeds. A problem in statutory construction can seriously bother courts only when there is a contest between probabilities of meaning."

He further quotes Mr. Justice Holmes to have written in private correspondence:

> "Only a day or two ago—when counsel talked of the intention of the legislature—I was indiscreet enough to say, 'I don't care what their intention was—I only want to know what the words mean.' "

Thus it appears that the problem is to read the statute. If only one meaning can be found in the words there is an end of inquiry and the intention of Congress is expressed as that one meaning, for congressional intent is of no effect and cannot be ascertained unless it is duly enacted. But if the words support two or more meanings, then only one meaning included in the words may properly be said to have been enacted and the problem is to determine, by whatever means appeal to a logical mind, which of those meanings is the purpose of the legislation. Whatever Congressmen intend, unless they, as Congress, make it into a statute, is of no effect at all. Senate Reports, House Reports, press releases, luncheon table conversation do not constitute law, even if in proper cases of real ambiguity reference may be had to some of these factors to assist a court in arriving at a proper conclusion as to which of several meanings expressed in a statute is the law.

In the present case no word of the statute is suggested for construction and the only word which can be "construed" to accomplish the conclusion of the court below is the word "not." This word is an unambiguous negative not subject to construction to have an affirmative sense.

The court below ignores that word and only so can accomplish its conclusion. The decision of the court below is in reality based upon the proposition that Congress did not mean what it enacted. Such a holding is not within the function of any court whose duty is to effectuate the expressed purposes of Congress—not to determine their prudence or wisdom or to make inquiry into Congress' unenacted purposes.

The proposition that a statute does not express legislative intent, logically speaking, commits *felo de se;* if the statute does not express intent, what basis is there for the assumption that a Committee Report or any other expression of less dignity than the statute itself expresses it?

In *Helvering v. City Bank Farmers Trust Co.,* 296 U. S. 85, l. c. 89, the court ruled:

> "We are not at liberty to construe language so plain as to need no construction, or to refer to Committee Reports when there can be no doubt of the meaning of the words."

The following authorities *(ex pluribus)* are to the same effect:

> *Osaka Shosen Kaisha Line v. U. S.,* 300 U. S. 98;
> *United States v. Fisher,* 2 Cranch. (U. S.) 358;
> *Adams Express Co. v. Kentucky,* 238 U. S. 190, l. c. 199;
> *United States v. Hartwell,* 6 Wall. (U. S.) 385;
> *United States v. Mo. Pac. R. R. Co.,* 278 U. S. 269, l. c. 277;
> *United States v. Ogilvie Hardware Co.* (C. C. A. 5), 155 F. (2d) 577, 579, aff'd 330 U. S. 709;
> *Railroad Commission v. Chicago, Burlington & Quincy R. R. Co.,* 257 U. S. 563, l. c. 589;

Mertens, *Law of Federal Income Taxation*, Vol. 1, page 118 (Sec. 3.29);
American Jurisprudence, Vol. 50, page 204, title *Statutes*, Section 225.

The court below has held (without citation of any authority) that resort may be had to legislative history when there is "uncertainty in the use of the language," and that petitioners' contention that the amendment to Section 22 (b) (3) of the Internal Revenue Code by the Revenue Act of 1942 was intended to apply to all trusts, gives rise to such uncertainty. However, the authorities, including the decisions of this Court, are all otherwise and to the effect that mere contentions do not give rise to ambiguity, but the ambiguity must be in the words of the statute. Further, petitioners' contention that the amendment was intended to apply to all *trusts* gives rise to no uncertainty at all, since it is obvious from a reading of the amendment that it was intended to apply to all *income*. It is therefore written in Section 22 (b) immediately following Section 22 (a) the general definition of income. It applies not only to trust income of all trusts, but to all income from property. If it applies, *as it unquestionably does*, to the case of an annuity charged upon property where another than the annuitant continues to own the property and manage it in all respects subject only to the annuity, then it seems *a fortiori* to apply to the income of property held in trust, whatever the purpose of the creation of the trust, even if the trust is revocable or amendable. If the trust be ignored, or the income treated as not of the trust, the result is still the same.

The preceding phrase of the section, providing that there shall not be excluded from income the income from property acquired by gift, admittedly and in its terms applies only to income after the property has been so acquired. It

does not apply to income from property placed in a revocable trust, because such property is not *acquired* by gift. But the phrase which was new in 1942 applies *only* to income acquired by gift, where the property which gives rise to such income was retained by the donor. To read the phrase as applicable only to income from property after the property has been acquired by gift is to repeat the preceding phrase, and to ignore both the words and the purpose of the amendment.

The first phrase was, in substance, in the prior statutes, and remains unchanged. The court below deprives the amendment, the second phrase, of all meaning whatsoever, ignoring the addition it makes.

The amendment in its terms applies to income from property when such *income*, not the property from which it is derived, is given away. The material determination is that the income is from property and is given away. That the income in this case was the subject of a gift is admitted by respondent; also it was so determined by a final adjudication of the courts. *George v. Commissioner*, 143 Fed. 2d 837.

The existence of a trust facilitates the determination that income and not mere property was given. This might be difficult to establish in another case, and might not be established by a mere gift of cash in an amount equivalent to a dividend or interest received, or even by the gift of a coupon from a bond which might have accrued as income when the coupon was clipped. Thereafter the coupon might have been property—a promissory note—and not income. The language of the statute, however, leaves no room to doubt its application to the gift of income from property whenever the fact that the gift is of income is established.

The court below finds no ambiguity in the word "gift" or in the word "income." It is readily conceded that each of these words is susceptible of diverse meanings, but neither of the words has any meaning within which there would not have been a gift of income in this case. Whatever ambiguity there may be in these words is irrelevant and the court below finds none.

C. **The Circuit Court of Appeals has departed from the accepted and usual course of judicial proceedings.**

The Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings in refusing to apply the laws duly enacted to the facts before it as to call for an exercise of this court's power of supervision. The case before the court below was made up of undisputed facts which may be summarized as follows: Petitioners' decedent, P. D. George, during the years 1942 and 1943 made gifts of income from shares of stock to his son, Pericles Francis George. The statute before the court provided, "The following items shall not be included in gross income and shall be exempt from taxation under this chapter: * * * There shall not be excluded * * * in case the gift * * * is of income from property, the amount of such income."

The court below omitted or refused to apply this statute to the facts before it. As its reason it stated only that a trust created by petitioners' decedent as a means of conveying income to Pericles Francis George was not a real trust within the meaning of Supplement E of the Internal Revenue Code. It was not contended by petitioners that it was a real trust. It has always been conceded, even asserted, since the case of *P. D. George v. Commissioner of Internal Revenue*, 143 Fed. (2d) 837, was decided, that the trust was not a real trust but only a means or agency for the collection and conveyance of income.

The fallacy of the reasoning of the Court below appears in a summary of its opinion: The trust in this case is not a real trust, since the grantor retained control. Therefore, the income is that of the grantor under Section 22 (a). Therefore, the exclusions specified in later subdivisions of Section 22 are not allowable.

The income, but for the gift, was that of the grantor; without that conclusion, under Section 22 (a), the provisions of Section 22 (b) could have no application. No exclusion or benefit of Section 162 or other trust section (Supplement E) of the Internal Revenue Code is sought, but the Court treats Section 22 (b) as if it were a part of that supplement concerning trusts.

The Court expresses reliance only upon *Douglas v. Willcuts,* 296 U. S. 1, to establish that because the income was P. D. George's, it was therefore taxable to him. The case so establishes if, and only if, there is no exclusion of the income from the grantor's income by another section of the statute. There can be no question that the tax result of the facts in *Douglas v. Willcuts* was changed in 1942, and the decision in that case upon the particular facts there involved is no longer law. Section 22 (k) of the Internal Revenue Code provides that alimony is deductible by the husband, the payor, and taxable as income to the wife, the recipient. Therefore the trust income used to pay alimony is taxable to the wife. It is held that Section 22 (k) applies not only to "the perfect and complete trust," but to all income, whether of property held in trust or owned absolutely or substantially (Regulations 111, Sec. 29.22 [k]-1).

Section 22 (b) cannot properly be held to be limited to the income of a trust. It provides, *inter alia,* for the exclusion of interest upon the obligations of a State (22 [b] [4]) and compensation for injuries or sickness (22 [b]

[5]). These exclusions are not dependent on the existence of a valid trust.

More particularly, Section 22 (b) (3) provides for the exclusion from gross income of the value of property acquired by gift, bequest, devise or inheritance. This is true whether or not the transfer is to a trustee. It is limited by the provision that the income from property so acquired is not excluded. Such income is included whether or not there is a trust.

In the same category, in case the gift is of income from property, such income is not excluded. The court's reasoning deprives the amendment of all meaning, because if there is a complete and valid trust, then the trust property belongs in substance to the beneficiary, and the income is taxable to him under the preceding phrase, the same as prior law, as income from property received by gift (*Blair v. Commissioner*, 300 U. S. 5). In such a case, there is no gift of income, but of corpus, the equitable interest in the trust *res*.

In fact, the court below has put the cart before the horse. It is uniformly ruled that the trust provisions of the Code (Supplement E) have no application unless the income in question is income of the trustee by virtue of the provisions of Section 22. (*Helvering v. Clifford, supra; Helvering v. Wood*, 309 U. S. 344.) The court below rules that Section 22 has no application in the determination of the question to whom income is taxable unless Supplement E is applicable. It determines, first, that Supplement E is inapplicable because, under Section 22, the income is that of the grantor, not the trustee; and then that, for the very reason that Supplement E is inapplicable, Section 22 is inapplicable. If Section 22 determines that the income is that of the grantor, then Section 22 also determines to whom that income is taxable. The question here is be-

tween donor and donee of income; not between grantor and fiduciary or beneficiary of a trust. There is no income of any property held in trust.

The judgment of the court below, in limiting the application of the provisions of Section 22, particularly the exclusions provided in Section 22 (b) of the Internal Revenue Code, to income of or from trusts, is clearly erroneous. Its reasoning is so far from logic that the conclusion cannot be escaped that it reached its conclusion independent of all reason. Its conclusion is arbitrary and capricious, departing in this from the accepted course of judicial procedure. There is nothing more obnoxious to the usual course of judicial procedure than the denial of legislative power to remedy what the legislative branch of government considers an evil, and the specious reasoning of the court below can demonstrate only a stubborn, unjudicial insistence upon court-made law, even when it is declared by statute to be contrary to the will and policy of the nation.

SUMMARY.

It is submitted that certiorari should be granted in this case for the following reasons:

(A) The question of Federal law is important to the administration of the fiscal laws of the United States. In importance it is exactly on a par with the question decided by this Court in the case of *Helvering v. Clifford, supra.* It vitally affects the solvency of a very numerous class of taxpayers.

(B) The decision below conflicts with applicable decisions of this Court upon the reading of statutes. The Court below has held that "Congressional intent" may be ascertained from a Committee Report in preference to a statute. The decisions of this Court are that Congressional intent

must be ascertained from the statute which was enacted, and that only when conflicting intents can be found expressed in the statute may resort be had to expressions of less dignity for the ascertainment of which of those conflicting intents is the true intent of the statute. The Court has inquired into the intention of Congress and has omitted to apply the enactment of Congress.

(C) The Court below has departed from the accepted and usual course of judicial proceedings in that it does not base its decision upon any reason, but has reached a decision arbitrarily and attempted to supoprt that decision by mere language which, as applied to the facts, does not make sense.

Respectfully submitted,

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INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 637

MERCANTILE-COMMERCE BANK AND TRUST COMPANY AND JOHN EDWIN GEORGE, EXECUTORS OF THE ESTATE OF P. D. GEORGE, DECEASED, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 29-34) is not reported. The opinion of the Circuit Court of Appeals (R. 46-52) is reported in 165 F. 2d 307.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 15, 1948 (R. 52). The petition for a writ of certiorari was filed March 2, 1948. The jurisdiction of this Court is in-

voked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Whether the court below erred in affirming the Tax Court's decision that the income of a trust fund, of which taxpayer concedely was the substantial owner, was taxable to taxpayer under Section 22 (a) of the Internal Revenue Code.

STATUTES AND REGULATIONS INVOLVED

These appear in the Appendix, *infra*, pp. 14–20.

STATEMENT

This case involves income tax liability for the years 1942 and 1943.[1] In 1939 taxpayer transferred stock of P. D. George Company to himself and two others in trust for his seven sons. Under the terms of the trust instrument taxpayer reserved, among other powers, the right to change the beneficiaries of the corpus and income. The Commissioner determined that the trust income for 1939 was taxable to taxpayer by virtue of the powers retained by him. The Tax Court, in a memorandum opinion entered July 16, 1943, sustained the Commissioner's determination, holding that taxpayer was taxable on the

[1] Taxpayer died in 1945 and is represented by his executors (R. 29). Although a deficiency is asserted only for the year 1943, taxpayer's income tax liability for 1942 must be taken into account as provided in Section 6 of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126.

trust income under Section 22 (a) of the Internal Revenue Code, and *Helvering* v. *Clifford*, 309 U. S. 331. Upon appeal, the Circuit Court of Appeals affirmed the Tax Court's decision (143 F. 2d 837), and this Court denied certiorari (323 U. S. 778) (R. 30).

Prior to 1942 taxpayer caused the stock held in trust for six of his seven sons to be distributed to them. Thereafter the trust estate consisted of 100 shares of stock held for the seventh son. The trust income for 1942 and 1943 was distributed to this son, who reported the income and paid the tax (R. 30). The Commissioner included the 1942 and 1943 trust income in taxpayer's gross income as defined in Code Section 22 (a), resulting in the income tax deficiency here in controversy (R. 31). Taxpayer contested the Commissioner's determination on the theory that the *Clifford* doctrine had been nullified by the amendments to Code Sections 22 (b) (3) and 162, enacted by Section 111 of the Revenue Act of 1942, c. 619, 56 Stat. 798. The Tax Court rejected this contention and sustained the Commissioner (R. 31–34). The Circuit Court of Appeals affirmed (R. 47–52).

ARGUMENT

1. The court below correctly affirmed the Tax Court's decision, sustaining the Commissioner's determination, that taxpayer was taxable on the trust income under Section 22 (a) and *Helvering*

v. *Clifford,* 309 U. S. 331. It is stipulated (R. 17), and the Tax Court found (R. 30), that taxpayer reserved the right to change the beneficiary of both the income-producing corpus and the income. In harmony with the principles enunciated by this Court in the *Clifford* case it has repeatedly been held that a settlor who retains such a power remains the substantial owner of the trust property for purposes of Section 22 (a).[2] The identical question here presented, involving the same taxpayer and the same trust instrument but a different taxable year, was decided adversely to taxpayer by the court below in *George* v. *Commissioner,* 143 F. 2d 837, and this Court denied certiorari, 323 U. S. 778 (R. 30). Nothing has occurred since denial of certiorari in that case which calls for review.

Taxpayer requests further review on the theory (Br. 12–29) that Code Sections 22 (b) (3) and

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[2] See, *e. g.*, *Stockstrom* v. *Commissioner*, 148 F. 2d 491 (C. C. A. 8th), certiorari denied, 326 U. S. 719; *Brown* v. *Commissioner*, 131 F. 2d 640 (C. C. A. 3d), certiorari denied, 318 U. S. 767; *Edison* v. *Commissioner*, 148 F. 2d 810 (C. C. A. 8th), certiorari denied, 326 U. S. 721; *Commissioner* v. *Buck*, 120 F. 2d 775 (C. C. A. 2d); *Hyman* v. *Nunan*, 143 F. 2d 425 (C. C. A. 2d); *Miller* v. *Commissioner*, 147 F. 2d 189 (C. C. A. 6th); *Steckel* v. *Commissioner*, 154 F. 2d 4 (C. C. A. 6th); *Helvering* v. *Elias*, 122 F. 2d 171 (C. C. A. 2d), certiorari denied, 314 U. S. 692. In the case of a family trust "the possession of such a power is conclusive" in marking the grantor the substantial owner of the trust property (*Hyman* v. *Nunan*, *supra*, p. 428), for it is "chief" among the "satisfactions which are of economic worth" (*Commissioner* v. *Buck*, *supra*, p. 777).

162, as amended by Section 111 of the Revenue Act of 1942 (Appendix, *infra*), are designed to repudiate the fundamental principle, exemplified in the case of gifts in trust by the *Clifford* case, that command over property or its income denotes the real owner for purposes of Section 22 (a). The theory was properly rejected by the courts below (R. 31–34, 47–52). The basic fallacy in taxpayer's argument is that it isolates Section 22 (b) (3) from its statutory context and treats that exemption section—indeed, a single clause in it—as though it were a taxing statute unto itself.

Sections 22 (b) (3) and 162 (as well as Sections 22 (a), 161, 166 and 167 (Appendix, *infra*)) are functionally related; in fact, both were amended by the self-same section of the 1942 Act upon which taxpayer relies.[3] When the 1942 amendments are examined in the light of the statutory mosaic upon which they were superimposed, their legislative history, and the administrative interpretation, it is apparent that they were no more designed to relieve from tax a donor of income from property (or of income-producing property of which he remains the substantial owner) than a donor of income de-

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[3] Paragraph (a) of Section 111 of the Revenue Act of 1942 amended Code Section 22 (b) (3); paragraph (b) amended Code Section 162 (b); and paragraph (c) added Code Section 162 (d). By paragraph (e) the amendments were made applicable to taxable years beginning after December 31, 1941.

rived from services. The amendments were addressed to the problem of who, as between the fiduciaries and beneficiaries of a trust, is taxable on the trust income; not who, as between the grantor and the fiduciary-beneficiaries, is taxable. They presuppose a real gift in trust, i. e., one where Sections 161 and 162 come into play; not an abortive one where (as here) the grantor retains substantial ownership of the trust property and hence remains taxable on the trust income under Section 22 (a), 166, or 167. And far from limiting what must be included in the grantor's gross income under the latter sections, they limit what may be excluded from the beneficiary's gross income under Sections 22 (b) (3) and 162.[4] A grantor who continues to enjoy

[4] Section 161 provides that taxes applicable to individuals apply to estates and trusts, and that the tax is to be paid by the fiduciary. Section 162 (b) provides that the net income of the estate or trust is to be computed in the same manner as in the case of an individual, except that an "additional deduction" is allowed to the fiduciary for the "amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary" to the beneficiaries, provided the amount so deducted is reported by the beneficiaries. Section 22 (b) (3), prior to its amendment by the 1942 Act, provided for the exclusion from gross income (as defined in Section 22 (a)) of "The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income)." Where a completed gift of income-producing property was made *directly to the donee*, no difficulty in the application of this provision arose; the donee could exclude from his gross income the value of the "property," but not the future "income" from it. Where the gift was made *in trust*, however, there

substantial ownership of the trust fund does not insulate himself from tax liability under Section 22 (a) by simply pointing to other provisions of the taxing statute which would have operated to shift the tax to the fiduciary-beneficiaries *if*

resulted a severance of the "property" and the "income" as between the fiduciary and the beneficiary. In reporting the trust income pursuant to Section 162 the *fiduciary* could of course exclude the value of the corpus and also deduct the amounts of income distributed to the beneficiaries; but the question arose whether a life *beneficiary* of a trust could treat the amounts received from the trustee as exempt "property." This question was resolved in *Irwin* v. *Gavit*, 268 U. S. 161, which construed the predecessor of Section 22 (b) (3) as not exempting the beneficiary from tax. However, the exemption provision was also later construed as excluding from a trust beneficiary's gross income so-called annuity payments, notwithstanding that such payments were made in whole or in part out of the trust income. *Burnet* v. *Whitehouse*, 283 U. S. 148. Accordingly, it was held that the fiduciary could not deduct the amount of trust income distributed to the annuitant in computing the net income of the trust under Section 162, with the consequence that the other income beneficiaries were compelled to bear the burden of the tax on such income. *Helvering* v. *Pardee*, 290 U. S. 365. Section 111 of the Revenue Act of 1942 corrected this situation by adding paragraph (d) to Section 162, and by also correlatively amending Section 22 (b) (3), so as to require annuitants to bear the tax allocable to amounts received by them from the trust income. At the same time, the construction placed upon Section 22 (b) (3) in *Irwin* v. *Gavit*, *supra*, was written into that section; this was done by insertion of the phrase "gift * * * of income from property" as an *exception* to the exemption accorded to donees by that section. It is this phrase, referred to in the accompanying committee reports (R. 32–33) as merely a confirmation of the "existing law" as laid down in *Irwin* v. *Gavit*, which taxpayer claims was designed to vitiate the *Clifford* doctrine.

he had made a real gift in trust. "These provisions have appropriate reference to cases where the income of the trust is no longer to be regarded as that of the settlor." *Douglas* v. *Willcuts,* 296 U. S. 1, 10. Retention of substantial ownership transcends every term of the trust instrument and endows the grantor with that command over the trust income which stamps him the true owner for tax purposes. To subscribe to the interpretation which taxpayer places upon the 1942 amendments of Sections 22 (b) (3) and 162 would produce the anomaly that Sections 166 and 167 (requiring taxability of trust income to a grantor who retains substantial ownership through a power to retake either the trust corpus or income) are no longer in force though never repealed. What is more, it would require taxation of income to him who collects it, rather than to him who has the power to dispose of it, and thus sanction concepts of tax liability which are the antithesis of those to which the courts have adhered from the beginning of our revenue laws. See *Corliss* v. *Bowers,* 281 U. S. 376; *Lucas* v. *Earl,* 281 U. S. 111; *Helvering* v. *Clifford, supra*; *Helvering* v. *Horst,* 311 U. S. 112; *Helvering* v. *Eubank,* 311 U. S. 122; *Harrison* v. *Schaffner,* 312 U. S. 579; *Commissioner* v. *Tower,* 327 U. S. 280. As the court below observed (R. 50), "If Congress intended a result so revolutionary in character, we think it would doubtless

have used language more explicit than that of the amendment."

That Congress had no such purpose in mind is plain from the Committee Reports accompanying the 1942 Act,[6] the material portions of which are quoted in the opinions below (R. 32-34, 51-52). The reports unequivocably state that the amendments were not meant to alter existing rules respecting the taxability of trust income or other assigned income under Section 22 (a). Even if the Committee Reports had not contained such positive statement of intent, the applicable Treasury Regulations would foreclose the interpretation advanced by taxpayer. Section 29.22 (b) (3)-1 of Regulations 111 (Appendix, *infra*) expressly provides that "Section 22 (b) (3) is not intended to tax a donee upon the same income which is taxed to the grantor of a trust or assignor of earnings or other income under section 22 (a), section 166, or section 167". This Regulation, harmonizing with the purposes expressed in the Committee Reports, cannot be said to be so unreasonable an interpretation of Section 22 (b) (3), as amended, as to be unauthorized. Cf. *Fawcus Machine Co.* v. *United States,* 282 U. S. 375; *Helvering* v. *Wilshire Oil Co.,* 308 U. S. 90. Indeed, the administrative interpretation must be deemed to have received

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[6] H. Rep. No. 2333, 77th Cong., 2d Sess., p. 67 (1942-2 Cum. Bull. 372, 424); S. Rep. No. 1631, 77th Cong., 2d Sess., p. 70 (1942-2 Cum. Bull. 504, 558).

implied legislative approval, for although the Code has several times been amended since this Regulation was promulgated in 1943, no further changes in Section 22 (b) (3) have been enacted. *Helvering* v. *Winmill*, 305 U. S. 79; *Boehm* v. *Commissioner*, 326 U. S. 287, rehearing denied, 326 U. S. 811; *Commissioner* v. *Flowers*, 326 U. S. 465. The *Clifford* doctrine, far from having lost its vigor, was recently reaffirmed by this Court in *Commissioner* v. *Tower, supra*, and is daily being applied by the Treasury Department and the courts. It has also been implemented by T. D. 5488, 1946-1 Cum. Bull. 19 (amended by T. D. 5567, 1947-14 Int. Rev. Bull. 2), which added Section 29.22 (a)-21 to Regulations 111 as a guide for applying the *Clifford* rule in taxable years beginning after December 31, 1945.

2. Taxpayer does not and cannot point to any case with which the decision below is in conflict. His assertion (Br. 21-24) of conflict with cases to the effect that legislative intent is to be found exclusively in the words of a statute rests upon the unwarranted assumption that the clause of Section 22 (b) (3) upon which he relies must be divorced from the rest of the statute. It is the duty of the courts to ascertain the legislative intent "not by taking the word or clause in question from its setting and viewing it apart, but by considering it in connection with the context, the general purposes of the statute in which it is found, the occasion and circumstances of its use,

and other appropriate tests for the ascertainment of the legislative will." *Helvering* v. *Stockholms &c. Bank*, 293 U. S. 84, 93–94. See also *United States* v. *Amer. Trucking Ass'ns*, 310 U. S. 534, 543–544; *Helvering* v. *Morgan's Inc.*, 293 U. S. 121, 126; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479; *Commissioner* v. *Flowers, supra.* In tearing a single phrase from the fabric of the statute, and insisting that the courts below were obliged to shut their eyes to its legislative history and every other aid to statutory construction,[a] taxpayer is heedless to the admonition of this Court (*United States* v. *Amer. Trucking Ass'ns, supra*, p. 544) that—

> Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, "excepting as a different purpose is plainly shown."

In any event, even assuming that the courts below were precluded from looking beyond the particular clause of Section 22 (b) (3) relied upon by taxpayer, and further assuming that the

[a] Taxpayer's contention (Br. 21–22) that the portion of Section 22 (b) (3) relied upon by him is unambiguous and not open to construction is inconsistent with his labored attempt (Br. 15–20) to find extrinsic support for his own construction.

clause is susceptible of but one literal interpretation,[7] that still would not prevent resort to its legislative history, for (*Harrison* v. *Northern Trust Co., supra*, p. 479)—

> words are inexact tools at best, and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how "clear the words may appear on 'superficial examination.' "

See also *Bazley* v. *Commissioner,* 331 U. S. 737, rehearing denied October 13, 1947; *United States* v. *Dickerson,* 310 U. S. 554, 562; *United States* v. *Amer. Trucking Assn.'s, supra,* pp. 543, 544; *Helvering* v. *Stockholms &c. Bank, supra,* p. 94; *Helvering* v. *Morgan's, Inc., supra,* p. 126.

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[7] The phrase "gift * * * of income from property" as used in Section 22 (b) (3) may hardly be deemed to be so clear on its face as to leave no room for construction. This Court recently had occasion to construe the term "income" (*Commissioner* v. *Wilcox*, 327 U. S. 404), and the term "property" (*Crane* v. *Commissioner*, 331 U. S. 1). See also *Irwin* v. *Gavit, supra; Douglas* v. *Willcuts, supra; Hort* v. *Commissioner*, 313 U. S. 28; *Helvering* v. *Wilshire Oil Co., supra.* In the latter case the Court stated (p. 102): "The ambiguous phrase 'net income * * * from the property' was susceptible of various meanings and hence administrative interpretation of it was peculiarly appropriate."

CONCLUSION

The decision below is correct. There is no conflict, and no occasion for further review. The petition should therefore be denied.

Respectfully submitted.

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MARCH 1948.

APPENDIX

Internal Revenue Code:

SEC. 21. NET INCOME.

(a) *Definition.*—"Net income" means the gross income computed under section 22, less the deductions allowed by section 23.

(26 U. S. C. 1940 ed., Sec. 21.)

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

(b) *Exclusions from Gross Income.*—The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

* * * * *

(3) [as amended by Section 111 (a) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Gifts, bequests, devises, and inheritances.*—The value of property acquired by gift, bequest, devise, or inheritance. There shall not be excluded from gross income under this paragraph, the income from such

property, or, in case the gift, bequest, devise, or inheritance is of income from property, the amount of such income. For the purposes of this paragraph, if, under the terms of the gift, bequest, devise, or inheritance, payment, crediting, or distribution thereof is to be made at intervals, to the extent that it is paid or credited or to be distributed out of income from property, it shall be considered a gift, bequest, devise, or inheritance of income from property; * * *

(26 U. S. C. 1940 ed., Sec. 22.)

SEC. 161. IMPOSITION OF TAX.

(a) *Application of Tax.*—The taxes imposed by this chapter upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) *Computation and Payment.*—The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in sec-

tion 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor).

* * * * *

(26 U. S. C. 1940 ed., Sec. 161.)

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

(b) [as amended by Section 111 (b) of the Revenue Act of 1942, *supra*] There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the legatees, heirs, or beneficiaries, but the amount so allowed as a deduction shall be included in computing the net income of the legatees, heirs, or beneficiaries whether distributed to them or not. As used in this subsection, "income which is to be distributed currently" includes income for the taxable year of the estate or trust which, within the taxable year, becomes payable to the legatee, heir, or beneficiary. * * *

* * * * *

(d) [added by Section 111 (c) of the Revenue Act of 1942, *supra*] *Rules for Application of Subsections* (*b*) *and* (*c*).—*For the purposes of subsections* (*b*) *and* (*c*).—

(1) *Amounts distributable out of income or corpus.*—In cases where the amount paid, credited, or to be distributed can be paid, credited, or distributed out of other than income, the amount paid,

credited, or to be distributed (except under a gift, bequest, devise, or inheritance not to be paid, credited, or distributed at intervals) during the taxable year of the estate or trust shall be considered as income of the estate or trust which is paid, credited, or to be distributed if the aggregate of such amounts so paid, credited, or to be distributed does not exceed the distributable income of the estate or trust for its taxable year. If the aggregate of such amounts so paid, credited, or to be distributed during the taxable year of the estate or trust in such cases exceeds the distributable income of the estate or trust for its taxable year, the amount so paid, credited, or to be distributed to any legatee, heir, or beneficiary shall be considered income of the estate or trust for its taxable year which is paid, credited, or to be distributed in an amount which bears the same ratio to the amount of such distributable income as the amount so paid, credited, or to be distributed to the legatee, heir, or beneficiary bears to the aggregate of such amounts so paid, credited, or to be distributed to legatees, heirs, and beneficiaries for the taxable year of the estate or trust. For the purposes of this paragraph "distributable income" means either (A) the net income of the estate or trust computed with the deductions allowed under subsections (b) and (c) in cases to which this paragraph does not apply, or (B) the income of the estate or trust minus the deductions provided in subsections (b) and (c) in cases to which this paragraph does not apply, whichever is the greater.

In computing such distributable income the deductions under subsections (b) and

(c) shall be determined without the application of paragraph (2).

(26 U. S. C. 1940 ed., Sec. 162.)

Sec. 166. Revocable trusts.

Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or

(2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom,

then the income of such part of the trust shall be included in computing the net income of the grantor.

(26 U. S. C. 1940 ed., Sec. 166.)

Sec. 167. Income for benefit of grantor.

(a) Where any part of the income of a trust—

(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

* * * * *

then such part of the income of the trust shall be included in computing the net income of the grantor.

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.22 (a)-1. *What Included in Gross Income.*—Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. (See sections 22 (b) and 116.) In general, income is the gain derived from capital, from labor, or from both combined, * * *

SEC. 29.22 (b)-1. *Exemptions.—Exclusions from Gross Income.*—Certain items of income specified in section 22 (b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. * * *

SEC. 29.22 (b) (3)-1. *Gifts and Bequests.*—Property received as a gift, or received under a will or under statutes of descent and distribution, is not includible in gross income, although the income from such property is includible in gross income. If the gift, bequest, devise, or inheritance is of income from property, it is not to be excluded from gross income. An amount of principal paid under a marriage settlement is a gift. As to alimony or an allowance paid upon divorce or legal separation, see section 29.22 (k)-1.

Section 22 (b) (3) provides a special rule for the treatment of gifts, bequests, devises, or inheritances which by their terms are to be paid, credited, or to be distributed at intervals. To the extent any such gift, bequest, devise, or inheritance is paid, credited, or to be distributed out of

income from property, it shall be considered a gift, bequest, devise, or inheritance of income from property. Section 22 (b) (3) is designed to provide the same treatment for amounts of income from property, which income is paid, credited, or to be distributed under a gift or bequest, whether the gift or bequest is in terms of a right to payments at intervals (regardless of income) or is in terms of a right to income. To the extent the amounts in either case are paid, credited, or to be distributed at intervals out of income they are not to be excluded under section 22 (b) (3) from the taxpayer's gross income. As to the extent such amounts are paid, credited, or to be distributed out of income from property in cases in which the payment, crediting, or distribution thereof is to be made by an estate or trust, see section 162 and the regulations thereunder. * * *

Section 22 (b) (3) is not intended to tax a donee upon the same income which is taxed to the grantor of a trust or assignor of earnings or other income under section 22 (a), section 166, or section 167.

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